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No. 76-1719

In the Supreme Court of the United States

OCTOBER TERM, 1977

WASHINGTON MEDICAL CENTER, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,

JAMES W. MOORMAN,
Acting Assistant Attorney General,

CARL STRASS,
GLEN R. GOODSELL,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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OPINION BELOW

The opinion of the Court of Claims (Pet. App. 1a-45a) is reported at 545 F. 2d 116.

JURISDICTION

The judgment of the Court of Claims was filed on October 20, 1976. A timely motion for rehearing and reconsideration with a suggestion for rehearing *en banc* was denied on January 7, 1977 (Pet. App. 46a). On March 18, 1977, the Chief Justice granted an extension for filing a petition for a writ of certiorari to and including June 6, 1977. The petition was filed on June 3, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether, at the time that certain original alleys within the District of Columbia were closed, fee simple title to those alleys was vested in the United States.

STATEMENT

Petitioners filed these consolidated cases in the Court of Claims to recover money paid by petitioners to the United States for the closing of certain portions of original alleys in the District of Columbia. The Court of Claims held that title to the original alleys, *i.e.*, alleys within the original Federal City established by President George Washington, was vested in the United States at the time of their closing, and that, therefore, petitioners had properly been charged for their closing (Pet. App. 1a-45a).

Petitioners, owners of lots abutting certain portions of the original alleys, sought to have those alleys closed so that they could erect buildings thereon (Pet. App. 3a). Accordingly, they filed applications for the closing with the City Council of Washington, D.C., the agent of the United States. The Council approved the closings on the express condition that petitioners pay not less than the assessed value of the contiguous lots as provided by Section 7-302 of the District of Columbia Code (1973) (*ibid.*). Petitioners paid the sums voluntarily and without protest, and thereafter erected buildings and other improvements on the closed alleys. The money paid was deposited in the United States Treasury to the credit of the United States (Pet. App. 4a).[1]

[1]The Court of Claims also noted that "[a]t all times [petitioners] and the Council conducted these transactions on the theory that the United States had fee simple title to these original alleys * * *" (Pet. App. 4a).

Petitioners subsequently filed these actions, seeking refund of their payments on the grounds that the United States had no title to the closed alleys, that the District of Columbia had no authority to make such charges, that the closed areas had only nominal value, and that the charges were in violation of due process of law (Pet. App. 5a-6a).[2] The Court of Claims, though noting that "[t]here is much support for defendant's estoppel argument and it may be that these cases could be disposed of on that basis" (Pet. App. 6a), elected to decide the title issue, not only to dispose of the present cases but also to serve as a precedent to other pending claims involving similar issues. In an extensive treatment of the history, case law, regulations and statutes relevant to the vesting of fee simple title to lands in the United States within the jurisdiction of the District of Columbia, the Court of Claims held that the United States had fee simple title to the original alleys involved in these consolidated cases (Pet. App. 8a-45a).

ARGUMENT

The decision of the Court of Claims, holding that the United States received fee simple title to the original alleys in the District of Columbia, largely involves a matter of local property law, does not conflict with any decision of this Court or of any other court, and does not merit further review.

1. Although petitioners purport to find substantial legal and historical support for their position that the

[2]Prior suits against the United States in the District Court of the District of Columbia (Civil Actions Nos. 1906-72, 2514-72, 1905-72, 660-72, 1093-71, and 2015-70) were dismissed for lack of jurisdiction (Pet. App. 5a).

United States did not receive fee simple title to the original alleys, the Court of Claims in an extensive opinion ultimately found that evidence unpersuasive. The court noted that, in the agreement with the original proprietors of the land, the President was given "the sole power of directing the federal city to be laid off in what manner he pleases" (Pet. App. 15a) and interpreted that and other language "as giving President Washington full power and authority to vest a fee simple title in the original alleys in the United States" (Pet. App. 16a). The court then concluded that he did so by regulations issued on October 17, 1791, stating: "The way into the square [*i.e.*, the alley], being designed in a special manner, for the common use and convenience of the occupiers of the respective squares, the property in the same is reserved to the public, so that there may be an immediate interference on any abuse of the use thereof by any individual to the nuisance or obstruction of others" (*ibid.*). The court found support for its conclusion in "the fact that the United States has asserted sovereignty over these alleys, after the cession by Maryland of the land involved, for over 175 years" (Pet. App. 18a).

This decision, though of significance to petitioners and various other landowners in the District of Columbia, does not concern a matter of national importance. The plat books, deeds of trust, letters of agreement, and other materials on which the parties rely are relevant only to certain lands within the District of Columbia and do not otherwise have precedential significance. Nor does the decision below in any way affect the operations of government in the Nation's capital. Indeed, the case more closely resembles a dispute among local property holders than

any matter of general federal importance warranting review by this Court.[3]

Moreover, contrary to petitioners' contentions, the decision of the Court of Claims does not conflict with prior decisions of this Court. Although this Court, in *Morris* v. *United States*, 174 U.S. 196, did acknowledge that certain designations of land for use by the United States were detailed in the "Dermott Map," the Court expressly declined to "accept the contention that it is to be considered as the completed and final map of the city * * *" (*id.* at 256). The Court went on to quote the remarks of Thomas Jefferson in 1804 that the plan of 1797 "left many things unfinished, some of which still remain to be declared" (*id.* at 258). In *Pratt* v. *Law*, 9 Cranch 456, 490, the Court concluded that a private landowner had *not* acquired fee simple title to the alley abutting his property, though it speculated in *dictum* that, had the property owner held title to all the lots in the square, there might have been "some ground" for his argument.[4]

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[3]Although petitioners contend (Pet. 13-16) that the Court of Claims should have applied the common law of Maryland to the title question in this case, we do not believe that common law principles would override the specific terms of the agreement with the original proprietors and the directive of President Washington. In any event, we do not think that this issue is of sufficient general importance to justify further review.

[4]There is similarly no conflict with *Fitzhugh* v. *United States*, 40 F. 2d 797 (C.A. D.C.) Although the court of appeals reviewed various arguments concerning title to alleys in that case, it concluded: "It is * * * unnecessary for us to determine the exact status of the title to the lands embraced within the original alleys in the City of Washington. It has been treated by Congress as being in the United States. * * * [W]hether that theory be correct or not, it is immaterial to the decision of this case * * *" (*id.* at 799).

As petitioner notes (Pet. 3), cases raising similar issues are presently pending in the Superior Court for the District of Columbia and the United States District Court for the District of Columbia. We see no reason why action on the present petition should await final decision in those cases. The Court will have an ample opportunity to consider this issue should a conflict or other circumstances warranting review arise at a later time.

2. Petitioner also contends (Pet. 17-21) that the Court of Claims should have considered certain documentary evidence and afforded them a later opportunity to cure deficiencies of proof. These arguments were raised in the court below in a Motion for Relief from Judgment and Remand to Trial Judge for Trial on Issue of Title to Alleyways (Pet. App. 48a), made under Rule 152(b) of the Court of Claims on the ground of newly discovered evidence. The evidence that petitioners sought to present, however, was available long before this action was filed, and petitioners offered no satisfactory explanation for their failure to present it at an earlier date. In these circumstances, the decision not to reopen the proceeding was within the discretion of the Court of Claims and does not merit review by this Court. *Valmont Industries, Inc.* v. *Enresco, Inc.*, 446 F. 2d 1193 (C.A. 10), certiorari denied, 405 U.S. 922.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

JAMES W. MOORMAN,
Acting Assistant Attorney General.

CARL STRASS,
GLEN R. GOODSELL,
Attorneys.

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